



# Town Council Agenda Report

**SUBJECT:** Resolution

**CONTACT PERSON/NUMBER:** Robert Rawls, Assistant Town Administrator - 797-1030

**TITLE OF AGENDA ITEM:** A Resolution of the Town of Davie, Florida, authorizing the Mayor to execute a Lease Agreement between the Town of Davie and the State of Florida, Department of Transportation for a park site located adjacent to the Florida Turnpike, approximately 1300 feet North of Stirling Road, and providing an effective date.

## **REPORT IN BRIEF:**

The Town has been in negotiations with the Florida Department of Transportation for consideration of a surplus barrow pit site know as Silver Lake. This parcel of approximately 39.19 acres lies West of the Florida Turnpike, East of SW 55th Avenue and North of SW 57th Street and contains two large water bodies bisected by a land bridge from the SW to NE corner. This parcel has been subject of ongoing discussions between the Department of Transportation and adjacent residents regarding the utilization of the south and westerly lake perimeters which are currently DOT lands but utilized by adjacent property owners. FDOT advanced various options which included purchase by the residents or the Town, securing of the full right-of-way area by FDOT or most recently the long-term lease agreement subject of this Resolution. The terms of the Lease Agreement provide for an annual rent of \$500.00 for a lease term of 50 years and a provision encouraging the Town to secure a relationship with the adjacent property owners to allow their continued use of existing private improvements within the lake site parcel. A Community workshop was held on June 1, 2000 to discuss development options and secure neighborhood input. A number of issues were discussed with comments noted in the attached memorandum Exhibit "B". Discussion focused on a limited passive park environment supporting non-motorized water uses, fishing, hiking, nature walks, and picnicking and a contrasted prospective which would preserve the site without benefit of public access. The attached Lease Agreement, Exhibit "A" was received on Wednesday, July 12, 2000 which did not afford an adequate time frame for the Town Attorney to fully review the document prior to agenda submittal. It was important that this matter be scheduled for the July 19, 2000 Town Council Meeting as this was the date represented to the residents for further consideration. FDOT has assured us of their cooperation to facilitate any necessary changes. Town Council may wish to consider the Lease at this time subject to any non-substantial changes required by Council or defer action to a subsequent date.

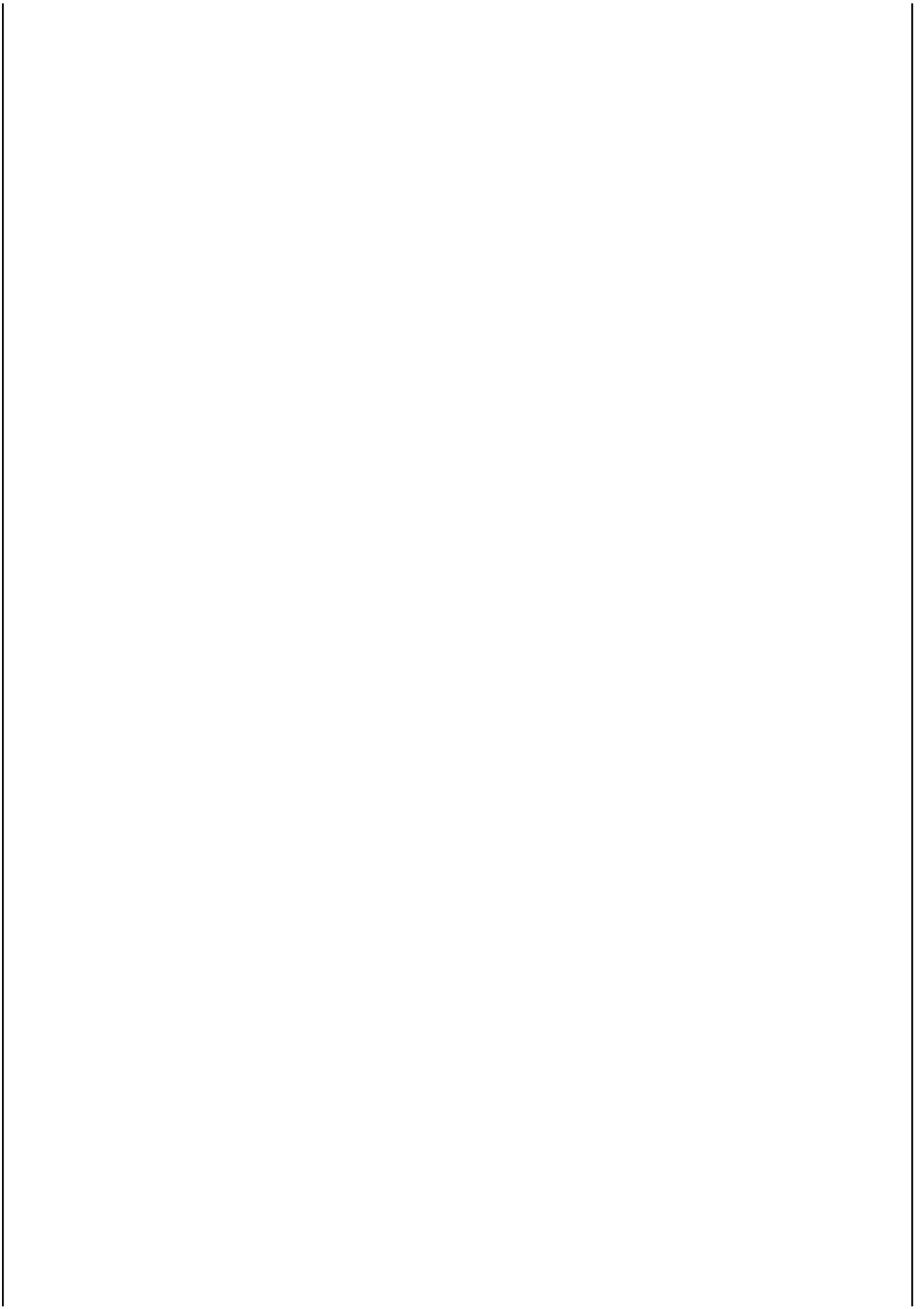
## **PREVIOUS ACTIONS:**

**CONCURRENCES:** Not Applicable

**FISCAL IMPACT:** Not Applicable

**RECOMMENDATION(S):** Motion to approve the Resolution

**Attachment(s):** Resolution  
Exhibit "A" Lease Agreement  
Exhibit "B" Meeting Synopsis



RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A LEASE AGREEMENT BETWEEN THE TOWN OF DAVIE AND THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION FOR A SITE LOCATED ADJACENT TO THE FLORIDA TURNPIKE APPROXIMATELY 1300 FEET NORTH OF STIRLING ROAD AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the policy of the Town of Davie, to provide open space parks and recreational facilities within the Town; and

WHEREAS, the Town is desirous of leasing a parcel of land known as FDOT Parcel #93S104, containing approximately 39.19 acres for utilization as a public open space park; and

WHEREAS, the attached Lease Agreement with the Florida Department of Transportation, a copy of which is attached hereto as Exhibit "A" provides for the lease of this property for a 50 year term at an annual rental fee of \$500.00.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the Lease Agreement between the Town of Davie, Florida and the State of Florida, Department of Transportation, a copy of which is attached hereto as Exhibit "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2000.

# EXHIBIT "A"

## STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION LEASE AGREEMENT

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W.P.I./SEGMENT NO.: 0150467/190708-1  
MANAGING DISTRICT: 8  
F.A.P. NO.: NA  
STATE ROAD NO.: 91  
COUNTY: BROWARD  
PARCEL NO.: 93S104

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, (hereinafter called the Lessor), and TOWN OF DAVIE, (hereinafter called the Lessee.)

### WITNESSETH:

In consideration of One Dollar (\$1.00) and other good and valuable considerations, the Parties agree as follows:

1. Property and Term. Lessor does hereby lease unto Lessee the lands described in Exhibit "A", for a term of FIFTY YEARS beginning 2000 and ending 2050.

If Lessee holds over and remains in possession of the land after the expiration of the term specified in this Lease, or any renewals of such term, Lessee's tenancy shall be considered a tenancy at sufferance, subject to the same terms and conditions as herein contained in this Lease.

This Lease is subject to all utilities in place and to the maintenance thereof as well as any other covenants, easements, or restrictions of record.

This Lease shall be construed as a lease of only the interest, if any, of Lessor, and no warranty of title shall be deemed to be given herewith.

2. Use. The leased land shall be used solely for the purpose of Public Park. If the land is used for any other purpose, the Lessor shall have the option of immediately terminating this Agreement. Lessee shall not permit any use of the land in any manner that would obstruct or interfere with any transportation facilities.

The Lessee will further use and occupy said premises in a careful and proper manner, and not commit any waste hereon. Lessees will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the premises. Any activities in any way involving hazardous material or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations or as those terms are understood in common usage, are specifically prohibited. The Lessee will not use or occupy said premises for any unlawful purpose and will, at Lessee's sole cost and expense, conform to and obey any present or future ordinances and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of said premises.

3. Rent. Lessee shall pay to Lessor as rent, on or before the first day of each rent payment period, the sum FIVE HUNDRED DOLLARS, plus tax, for each YEAR of the term. If this Agreement is terminated prior to the end of any rent payment period, the unearned portion of any rent payment, less any

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other amounts that may be owed to Lessor, shall be refunded to Lessee. Lessee shall pay any and all state, county, city and local taxes that may be due during the term hereof, including any real property taxes. Rent payments shall be made payable to the Department of Transportation and shall be sent to ADDRESS TO BE PROVIDED. The Lessor reserves the right to review and ~~adjust the rental fee biannually to reflect market conditions.~~ Any installment of rent not received within ten (10) days after the date due shall bear interest at the highest rate allowed by law from the due date thereof. This provision shall not obligate Lessor to accept late rent payments or provide Lessee a grace period.

4. Improvements. No structures or improvements of any kind shall be placed upon the land without prior approval in writing by the District Secretary for Turnpike District of Lessor. Any such structures or improvements shall be constructed in a good and workmanlike manner at Lessee's sole cost and expense. Subject to any landlords lien, any structures or improvements constructed by Lessee shall be removed by the Lessee, at Lessee's sole cost and expense, by midnight on the day of termination of this Agreement and the land restored as nearly as practical to its condition at the time this agreement is executed. Portable or temporary advertising signs are prohibited. At Lessor's option, any structures on the land may remain and will become the property of Lessor.

Lessee shall perform, at the sole expense of Lessee, all work required in the preparation of the property or premises hereby leased for occupancy by Lessee and Lessee does hereby accept the leased property or premises as now being in fit and tenable condition for all purposes of Lessee.

Lessor reserves the right to inspect the leased area and to require whatever adjustment to structures or improvements as Lessor, in its sole discretion, deems necessary. Any adjustments shall be done at Lessee's sole costs and expenses.

5. Maintenance. Lessee shall keep and maintain the land and any building or other structure, now or hereafter erected thereon, in good and safe condition and repair at Lessee's own expense during the existence of this lease, and shall keep the same free and clear of any and all grass, weeds, brush and debris of any kind, so as to prevent the same becoming dangerous, inflammable or objectionable. Lessor shall have no duty to inspect or maintain any of the land, buildings or other structures, if any, during the term of this Lease; however, Lessor shall have the right, upon twenty-four (24) hours notice to Lessee, to enter the property for purposes of inspection, including conducting an environmental assessment. Such assessment may include but would not be limited to: surveying, sampling of building materials, soil and groundwater; monitoring well installations; soil excavation; groundwater remediation; emergency asbestos abatement; operation and maintenance inspections; and, any other actions which might be reasonable and necessary. Lessor's right of entry shall not obligate inspection of the property by Lessor, nor shall it relieve the Lessee of its duty to maintain the property. In the event of emergency due to a release or suspected release of hazardous waste on the premises, Lessor shall have the right of immediate inspection, and the right, but no obligation, to engage in remedial action, without notice.

6. Indemnification. Lessee shall indemnify, defend, save and hold Lessor, its agents and employees, harmless of and from any losses, fines, penalties, costs, damage, claims, demand, suits and liabilities of any nature, including attorneys fees, (including regulatory and appellate fees), arising out of, because of, or due to any accidents, happening or occurrence on the leased land or arising in any manner on account of the exercise or attempted exercise of Lessee's rights hereunder whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of Lessor.

Lessee's obligation to indemnify, defend, and pay for the defense or at the Department's option, to participate and associate with the Department in the defense and trial of any claim and any related

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settlement negotiations, shall be triggered by the Department's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not excuse Lessee's duty to defend or indemnify within seven days after such notice by the Department is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically find the Department solely negligent shall excuse performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by the Department. Department's failure to notify Lessee of a claim shall not release the Lessee of the above duty to defend. The funding of this indemnification shall be from revenue sources other than ad valorem taxes.

7. Insurance. Lessee at its expense, shall maintain at all time during the term of the Lease, public liability insurance protecting Lessor and Lessee against any and all claims for injury and damage to persons or property occurring in, on or about the land arising out of the act, negligence, omission, nonfeasance or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than \$1 MILLION (\$1,000,000.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for property damage. All such policies shall be issued by companies of recognized responsibility licensed to do business with the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless Lessor is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide Lessor certificates showing insurance to be in place and showing Lessor as additional name insured under the policies. Lessor may require the amount of any public liability insurance to be maintained by Lessee be increased so that the amount thereof adequately protects Lessor's interest. Lessee further agrees that it shall during the full term of this Lease and at its own expense keep the land and any improvements on the land fully insured against loss or damage by fire and other casualty. Lessee also agrees that it shall during the full term of this Lease and at its own expense keep its contents and personal property located on the land fully insured against loss or damage by fire or other casualty and does hereby release and waive on behalf of itself and its insurer, by subrogation or otherwise, all claims against Lessor arising out of any fire or other casualty whether or not such fire or other casualty shall have resulted in whole or in part from the negligence of the Lessor.

8. Eminent Domain. Lessee acknowledges and agrees that its relationship with Lessor under this Lease is one of Landlord and Tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Lease. Termination of this Lease for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Lease, including but not limited to (i) any residual interest in the Lease, or (ii) any other facts or circumstances arising out of or in connection with this Lease.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including but not limited to special damages, severance damages, removal costs or loss or business profits resulting from its loss of occupancy or the leased property specified in the Agreement, or adjacent properties owned or leased by it, when any or all such properties are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether (i) this Lease is still in existence on the date of taking or sale; or (ii) has been terminated prior thereto.

9. Miscellaneous.

a. This Agreement may be terminated by Lessor immediately, without prior notice, upon default by Lessee hereunder, and may be terminated by ~~either party upon NINETY (90) days prior written~~ notice to the other party.

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b. In the case of litigation arising out of the enforcement of any terms, covenants or provisions of this Lease, the prevailing party shall be entitled to recover its reasonable attorney's fees from the non-prevailing party.

c. Lessee acknowledges that it has reviewed this Lease, is familiar with its terms and has had adequate opportunity to review this Lease with legal counsel of Lessee's choosing. Lessee has entered into this Lease freely and voluntarily. This Lease contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and the previous owner of the leased property and landlord of Lessee are merged in this Lease, which alone, fully and completely expresses the agreement between Lessee and Lessor with respect to the subject matter hereof. No modification, waiver or amendment of this Lease or any of its conditions or provisions shall be binding upon Lessor or Lessee unless in writing and signed by both such parties.

d. Lessee shall not sublet the leased property or any part thereof, nor assign this Lease, without prior consent in writing of Lessor, this Lease being executed by Lessor upon the credit and reputation of Lessee. Acceptance by Lessor of rental from a third party shall not be considered as an assignment or sublease.

e. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the land.

f. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

g. All notices to Lessor shall be sent to the address for rent payments and all notices to Lessee shall be sent to:

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION  
TURNPIKE DISTRICT  
Post Office Box 783069  
Winter Garden, FL 34787

h. See Addendum attached hereto and incorporated by reference herein.

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ADDENDUM TO LEASE AGREEMENT

1. **DELEGATIONS OF AUTHORITY:** Lessor's responsibilities and obligations herein shall be exercised by the State of Florida, Department of Transportation, Turnpike District.
2. **PURPOSE:** Lessee shall manage the leased premises only for the establishment and operation of the leased premises as a *lake recreational area and public park* open to the public, along with other related uses necessary for the accomplishment of this purpose as designated in the Management Plan required by paragraph 5 of this lease addendum.
3. **QUIET ENJOYMENT AND RIGHT OF USE:** Lessee shall have the right of ingress and egress to, from, and upon the leased premises for all purposes necessary to the full quiet enjoyment by said Lessee of the rights conveyed herein; provided however, that Lessor has disclosed to Lessee, and Lessee understands, that certain abutting property owners have constructed upon their own properties docks and other structures that encroach into the borrow lakes upon the property described in Exhibit "A." It shall be the responsibility of Lessee to reach an acceptable accommodation with each such abutting property owner concerning such encroachments; in the event that such an accommodation mutually acceptable to Lessee and the abutting property owner cannot be reached, then Lessee shall have the authority and responsibility to cause such encroachments to be removed by due process of law.

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4. **UNAUTHORIZED USE:** Lessee shall, through its agents and employees <sup>exercise every</sup> ~~prevent~~ <sup>reasonable</sup> ~~off~~ the unauthorized use of the leased premises or any use thereof not in conformance with this lease.
5. **MANAGEMENT PLAN:** Lessee shall prepare and submit to the Lessor a Management Plan for the leased premises, including the accommodation with or removal of encroachments by abutting private property owners, within <sup>THREE</sup> ~~two~~ months of the effective date of this lease. The Management Plan shall be submitted to Lessor for approval, except for the removal of existing encroachments. The leased premises shall not be developed or physically altered in any way other than what is necessary for security and maintenance of the leased premises without the prior written approval of Lessor until the Management Plan is approved. The Management Plan shall emphasize the original management concept as approved by Lessor on the effective date of this lease which established the primary public purpose for which the leased premises are to be managed. The approved Management Plan shall provide the basic guidance for all management activities and shall be reviewed jointly by Lessee and Lessor at lease every five years. Lessee shall not use or alter the leased premises except as provided for in the approved Management Plan without the prior written approval of Lessor. The Management Plan prepared under this lease shall identify management strategies for exotic species, if present. The introduction of exotic species is prohibited, except when specifically authorized by the approved Management Plan.

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6. **RIGHT OF INSPECTION:** Lessor or its duly authorized agents shall have the right at any time to inspect the leased premises and the works and operations thereon of Lessee, in any matter pertaining to this lease.
7. **INSURANCE REQUIREMENTS:** Lessee shall procure and maintain fire and extended risk insurance coverage in accordance with chapter 284, Florida Statutes, for any buildings and improvements to be located on the leased premises by preparing and delivering to the Division of Risk Management, Department of Insurance, a completed Florida Fire Insurance Trust Fund coverage Request Form and a copy of this lease immediately upon erection of any structures as allowed by paragraph 4 of this lease. A copy of said form and immediate notification in writing of any erection or removal of structures or other improvements on the leased premises and any changes affecting the value of the improvements on the leased premises and any changes affecting the value of the improvements shall be submitted to the following: State of Florida, Department of Transportation, Turnpike District, Department of Land Management, Post Office Box 783069, Winter Garden, Florida 34787.
8. **ARCHAEOLOGICAL AND HISTORIC SITES:** Execution of this lease in no way affects any of the parties' obligations pursuant to Chapter 267, Florida Statutes (1999). The collection of artifacts or the disturbance of archaeological and historic sites on state owned lands is prohibited unless prior authorization has been obtained from the Division of Historical Resources of the Department of State. The Management Plan prepared pursuant to paragraph 7 hereof shall be reviewed by the Division of Historical Resources to insure that adequate measures have been planned

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to locate, identify, protect and preserve the archaeological and historic sites and properties on the leased premises.

9. **UTILITIES:** In the event that the Lessee elects to construct any structures or other improvements on the property described in the attached Exhibit "A" that require the services of gas, electrical, telephone, water, sewer, or other utilities, then Lessee and the respective utility company shall request a *permit* from Lessor, and not an *easement*. Lessor will not unreasonably refuse the permit, but under no circumstances will Lessor provide a utility easement. Lessee shall be responsible for the payment of all charges for the furnishing of gas, electricity, water, sewer, and all other public utilities to the leased premises and for having all utilities turned off when the leased premises are surrendered.

10. **SUBLEASES:** This lease is for the purposes specified herein and subleases of any nature are prohibited, without the prior written approval of Lessor. Any sublease not approved in writing by Lessor shall be void and without legal effect.

11. **ENVIRONMENTAL AUDIT:** At Lessor's discretion, Lessee shall provide Lessor with a current Phase I environmental site assessment conducted in accordance with the Department of Environmental Protection, Division of State Land's standards prior to termination of this lease, and if necessary a Phase II environmental site assessment.

- T.O.D. 12. **AUDIT PRIOR TO LEASE (PHASE I)**  
**SURRENDER OF THE PREMISES:** Upon expiration or termination of this lease, Lessee shall surrender the leased premises to Lessor, in as good a condition as they were in at the commencement of this lease, normal wear and tear excepted. In the event no further use of the leased premises or any part thereof is needed, Lessee shall give written notification to the State of Florida, Department of Transportation,

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Turnpike District, Post Office Box 783069, Winter Garden, Florida 34787, at least six months prior to the release of any or all of the leased premises. Notification shall include a legal description, this lease number, and an explanation of the proposed release. The release shall only be valid if approved by Lessor through execution of a release of lease instrument with the same formality as this lease. Upon release of all or any part of the leased premises or upon expiration or termination of this lease, all improvements, including both physical structures and modification to the leased premises, shall become the property of the Lessor, unless Lessor gives written notice to Lessee to remove any or all such improvements at the sole expense of Lessee. The decision to retain any improvements upon termination of this lease shall be at Lessor's sole discretion. Prior to surrender of all or any part of the leased premises, a representative of the State of Florida, Department of Transportation, Turnpike District, shall perform an on-site inspection and the keys to any buildings on the leased premises shall be turned over to the Lessor. If the leased premises do not meet all conditions as set forth in paragraphs 19 and 22 herein, Lessee shall, at its expense, pay all costs necessary to meet the prescribed conditions.

13. **BEST MANAGEMENT PRACTICES:** Lessee shall implement applicable Best Management Practices for all activities conducted under this lease in compliance with paragraph 18-2.018(2)(h), Florida Administrative Code, which have been selected, developed, or approved by Lessor or other land managing agencies for the protection and enhancement of the leased premises.
14. **MINERAL RIGHTS:** This lease does not cover petroleum or petroleum products or minerals (specifically including topsoil, muck, peat, humus, sand, limrock, and

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common clay, as recited in Section 689.20, Florida Statutes) and does not give the right to Lessee to excavate, drill for or develop the same. Lessor specifically reserves the right to lease the leased premises for the purpose of exploring and recovering oil and minerals by whatever means appropriate; provided, however, that Lessee shall be fully compensated for any and all damages that might result to the leasehold interest of Lessee by reason of such exploration and recovery operations.

15. **ASSIGNMENT**: This lease shall not be assigned in whole or in part without the prior written consent of Lessor. Any assignment made either in whole or in part without the prior written consent of Lessor shall be void and without legal effect.
16. **PLACEMENT AND REMOVAL OF IMPROVEMENTS**: All building, structures, improvements, and signs shall be constructed at the expense of Lessee in accordance with the plans prepared by professional designers, and shall require the prior written approval of Lessor as to the purpose, location, and design. Further, no trees, other than non-native species, shall be removed or major land alterations done without the prior written approval of Lessor. Removable equipment and removable improvements placed on the leased premises by Lessee and which do not become a permanent part of the leased premises will remain the property of Lessee and may be removed by Lessee upon termination of this lease.
17. **MAINTENANCE OF IMPROVEMENTS**: Lessee shall maintain the real property contained within the leased premises and any improvements located thereon, in a state of good condition working order and repair including, but not limited to, maintaining the planned improvements as set forth in the approved Management Plan, meeting all building and safety codes in the location situated, keeping the leased

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premises free of trash or litter and maintaining any and all existing roads, canals, ditches, culverts, risers and the like in as good condition as the same may be on the effective date of this lease.

18. **ENTIRE UNDERSTANDING:** This lease sets forth the entire understanding between the parties and shall only be amended with the prior written approval of the Lessor. All prior representations and negotiations are merged into this Lease Agreement and do not survive the execution of the same.
19. **BREACH OF COVENANTS, TERMS, OR CONDITIONS:** Should Lessee breach any of the covenants, terms, or conditions of this lease, Lessor shall give written notice to Lessee to remedy such breach within sixty days of such notice. In the event Lessee fails to remedy the breach to the satisfaction of Lessor within sixty days of receipt of written notice, Lessor may either (a) terminate and recover from Lessee all damages Lessor may incur by reason of the breach including, but not limited to, the cost of recovering the leased premises, or (b) maintain this lease in full force and effect and exercise all rights and remedies conferred upon Lessor.
20. **NO WAIVER OF BREACH:** The failure of Lessor to insist in any one or more instances upon strict performance of any one or more of the covenants, terms and conditions of this lease shall not be construed as a waiver of such covenants, terms and conditions, but the same shall continue in full force and effect, and no waiver of Lessor of any one of the provisions hereof shall in any event be deemed to have been made unless the waiver is set forth in writing, signed by Lessor.

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21. **PROHIBITIONS AGAINST LIENS OR OTHER ENCUMBRANCES:** Lessor holds fee simple title to the leased premises. Lessee shall not or permit anything to be done which purports to create a lien or encumbrance of any nature against the real property contained in the leased premises including, but not limited to, mortgages, construction liens, or utility easements against the leased premises or against any interest of Lessor therein.
22. **CONDITIONS AND COVENANTS:** All of the provisions of this lease shall be deemed covenants running with the land included in the leased premises, and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate provision.
23. **DAMAGE TO THE PREMISES:** (a) Lessee shall not do, or suffer to be done, in, on or upon the leased premises or as affecting said leased premises or adjacent properties, any act which may result in damage or depreciation of value to the leased premises or adjacent properties, or any part thereof. (b) Lessee shall not generate, store, produce, place, treat, release or discharge any contaminants, pollutants or pollution, including, but not limited to, hazardous or toxic substances, chemicals or other agents on, into, or from the leased premises or any adjacent lands or waters in any manner not permitted by law. For the purposes of this lease, "hazardous substances" shall mean and include those elements or compounds defined in 42 U.S.C. Section 9601 or which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (EPA) and the list of toxic pollutants designated by the United States Congress or the EPA or defined by

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any other federal, state or local statute, law ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance, material, pollutant or contaminant. "Pollutants" and "pollution" shall mean those products or substances defined in Chapters 376 and 403, Florida Statutes, and the rules promulgated there under, all as amended or updated from time to time. In the event of Lessee's failure to comply with this paragraph, Lessee shall, at its sole cost and expense, promptly commence and diligently pursue any legally required closure, investigation, assessment, cleanup, decontamination, remediation, restoration and monitoring of (1) the leased premises, and (2) all off-site ground and surface waters and land affected by Lessee's failure to comply, as may be necessary to bring the leased premises and affected off-site waters and lands into full compliance with all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders, and decrees, and to restore the damaged property to the condition existing immediately prior to the occurrence which caused the damage. Lessee's obligations set forth in this paragraph shall survive the termination or expiration of this lease. Nothing herein shall relieve Lessee of any responsibility or liability prescribed by law for fines, penalties and damages levied by governmental agencies, and the cost of cleaning up any contamination caused directly or indirectly by Lessee's activities or facilities. Upon discovery of a release of hazardous substance or pollutant, or any other violation of local, state or federal law, ordinance, code, rule, regulation, order or decree relating to the generation, storage, production, placement, treatment, release or discharge of any contaminant, Lessee shall report such violation to all applicable governmental

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agencies having jurisdiction, and to Lessor, all within the reporting periods of the applicable governmental agencies.

24. **PAYMENT OF TAXES AND ASSESSMENTS:** Lessee shall assume full responsibility for and shall pay all liabilities that accrue to the leased premises or to the improvements thereon, including any and all drainage and special assessments or taxes of every kind, and all mechanic's or construction liens which may be hereafter lawfully assessed and levied against the leased premises.
25. **NON-DISCRIMINATION:** Lessee shall not discriminate against any individual because of that individual's race, color, religion, sex, sexual orientation, national origin, age, handicaps, or marital status with respect to access to the leased premises or any activity occurring within the leased premises or upon lands adjacent to and used as an adjunct of the leased premises.
26. **COMPLIANCE WITH LAWS:** Lessee agrees that this lease is contingent upon and subject to Lessee obtaining all applicable permits and complying with all applicable permits, regulations, ordinances, rules, and laws of the State of Florida or the United States or of any political subdivision or agency of either.
27. **TIME:** Time is expressly declared to be of the essence of this lease.
28. **GOVERNING LAW:** This lease shall be governed by and interpreted according to the laws of the State of Florida.
29. **SECTION CAPTIONS:** Articles, subsections and other captions contained in this lease are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this lease or any provisions thereof.

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30. **PUBLIC RECORDS:** This lease may be terminated by Lessor should Lessee fail to allow public access to all documents, papers, letters or other materials made or received in conjunction with this lease, pursuant to Chapter 119, Florida Statutes.

REQUEST FOR APPLICATION OF  
LEASE PAYMENTS TO ANY FUTURE  
PURCHASE AGREEMENT. (PENDING)

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## EXHIBIT "B"

### TOWN OF DAVIE OFFICE OF THE TOWN ADMINISTRATOR

#### MEMORANDUM

**TO:** Bob Rawls, Assistant Town Administrator  
**FROM:** Will Allen, Programs Administrator  
**DATE:** June 19, 2000  
**SUBJECT:** Silver Lakes Meeting- June 1, 2000

This serves a synopsis of the public meeting held concerning Silver Lake on June 1, 2000 in the Community Room and is a reminder of the timing suggested at that meeting. The meeting was very well attended with approximately 75 persons from the neighborhood. The purpose of the meeting was to discuss how the people in the neighborhood wanted the nearly 40 acre parcel with two lakes taking up about 23 acres to be used. A fact sheet about the site is attached. The owner of the property is FDOT. FDOT has indicated an intent to fence off the lake to secure its property. There are currently about 34 homes which abut the lake and which have direct access to the property. Another potential option is for the Town to lease the property. The Town would attempt to maintain the current appropriate activities while allowing public access with activities focused at the northeast corner of the site.

At the meeting there was substantial comments and discussion about the potential options. What follows is a summary of comments which were made. It is important to note that it was indicated at the meeting that this item would most likely be considered at the JULY 19, 2000 TOWN COUNCIL MEETING.

#### COMMENTS:

**Access-** There was a concern about where the access would be located and the attendant concerns of traffic concerns and safety of children.

**Traffic-** The theme of traffic concerns was raised by several people. It was indicated the most likely access point would be at the southeast corner where the existing fence and barricade are located. There were comments about the neighborhood having a lot of children and being children oriented. It was commented that a great deal of traffic is not expected and usage of the park would be mostly from the neighborhood.

Use as a bird sanctuary- This comment brought applause from the audience.

Why do we want people to fish in our lake?

Boats? It was indicated there would be no rental boats or boat ramp and gasoline engines would not be allowed.

Facilities? It was indicated the facilities at a park would be very limited and the hours would be limited to sunrise to sundown.

Traffic- concern for children.

ATVS? They would not be allowed. There would be trails for hiking, horses, and bikes.

There was a comment about the use of grills and potential fire hazards.

Security- There were comments that security would be needed at the site. there have been vagrants on the site. It was asked if perhaps a policeman could live on the site.

It was commented that the residents would like to see a copy of the lease prior to approval.

Traffic- It was indicated a great deal of traffic would not be expected because of the park. Comparisons were made to the existing facilities at Wolf Lake.

Trees along the Turnpike- Concern was expressed that Australian Pines were recently removed along the eastern portion of the site and now the Turnpike is visible and the noise has increased. It was indicated the Town is looking into who removed the Australian Pines. It may have been FDOT, FPL or the drainage district. It was indicated that the Town had petitioned for a meeting concerning the placement of a sound wall along the Turnpike which had been deferred to the Turnpike Authority.

A concern was expressed about invading the privacy of those now living on the lake. A person in the audience commented that Robbins Park is great and does not bother adjoining residents. Another commented that the park is a great idea so long as it is similar to Wolf Lake.

It was suggested that the existing Australian Pines be kept on the property. It was mentioned that some logs had been dumped into the lake when the trees along the Turnpike were removed.

Another person suggested have a security person live on the lake.

An overview of the meeting was given at the end of the session. The preferred option is that no other uses be on the site. There was no support

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for the State of keep the property and fence it off. There was some concern for boating with a consensus that there be no rental boats, no boat ramp and no gasoline motors. Hiking would be on the site and trails could be used by horses and bikes. The site would allow picnicking. A concern was expressed about grills but the consensus was that grills are acceptable.

